Tan Ah Tah F.J. and Chua J. concurred.

Order accordingly.

Solicitors: *Allen & Gledhill.*

THIAN THIN SOON & ANOR. v. TI TEOW ENG

[A.C.J. (Gill J.) April 17, 1967]

[K.L. — Civil Appeal No. 29 of 1967]

Landlord and Tenant — Premises required for rebuilding purposes — Public interest — Certificate of Rent Assessment Board — Appeal by tenant — Circumstances under which appeal can be allowed — Control of Rent Ordinance, 1956, ss. 11(1) & 12(1)(m).

This was an appeal against the decision of the Rent Assessment Board giving a certificate to the respondent as owner to demolish certain premises for the purposes of rebuilding as in the board's opinion it was in the public interest to do so.

Held: for the appellants to succeed, by section 11(1) of the Control of Rent Ordinance, 1956, they had to show that the board erred in law. This they could do only by making out either that there was no evidence on which the board directing itself correctly as to the law could have arrived at the conclusion at which it did arrive or that as a matter of inference the evidence on which the board acted should not have led to that conclusion. The court would only interfere if the conclusion could not reasonably be drawn from the primary facts. Taking the evidence as a whole in this case it could not be said that there was no evidence to support the board's decision, or that the evidence was inconsistent with its decision or that the only reasonable conclusion from the evidence contradicted its decision.

Cases referred to:—

(1) *Gurcharan Kaur* v. *Rochi Silk Store* [1959] M.L.J. 229, 231.

(2) *Bracegirdle* v. *Oxley* [1947] K.B. 349, 358.

(3) *Mock How Chun* v. *Lim Choon Fah* K.L. Civil Appeal No. 1 of 1959 (unreported).

CIVIL APPEAL.

N. A. Marjoribanks for the 1st appellant.

Chew Kok Chooi for the 2nd appellant.

R. R. Chelliah for the respondent.

Gill J.: This was an appeal against a decision of the Rent Assessment Board, Kuala Lumpur dated the 27th of August, 1966, granting a certificate under section 12(1)(m) of the Control of Rent Ordinance, 1956 to the effect that it was satisfied that the respondent as owner intended to demolish premises No. 1, Bukit Bintang Road, Kuala Lumpur for the purposes of rebuilding and that in its opinion it was in the public interest that he should be allowed to do so.

The appeal was brought under section 11(1) of the Ordinance which says that "an appeal shall lie on a point of law from any decision of the board." In granting the certificate the board had to be satisfied (1) that the owner intended to demolish the building for the purpose of rebuilding and (2) that in its opinion it was in the public interest that he should be permitted to do so. Both were questions of fact. For the appellant to succeed in his appeal he had to show that the board had erred in law. This he could do, as was laid down by the Court of Appeal in the case of *Gurcharan Kaur* v. *Rochi Silk Store,*[1] only by making out either that there was no evidence on which the board directing itself correctly as to the law could have arrived at the conclusion at which it did arrive or that as a matter of inference the evidence on which the board acted should not have led to that conclusion. As was stated by Denning J. (as he then was) in *Bracegirdle* v. *Oxley,*[2] "the court will only interfere if the conclusion cannot reasonably be drawn from the primary facts."

On the first question, the respondent gave evidence before the board that he intended to demolish the building and to rebuild a modern four-storied building, that he had had prepared by an architect site and building plans which had been approved by the Municipality and that he had made arrangements with the Malayan Banking Limited for an overdraft to meet the cost of the new building. His evidence was corroborated by the architect and a representative of the Malayan Banking Limited. Thus there was overwhelming evidence on which the board was justified in coming to a conclusion that the respondent intended to demolish and rebuild.

As regards the second question, the board had before it the evidence of Mr. Fong Chek Sam, the Acting Commissioner of Town and Country Planning as well as acting Chief Planning Officer for the Municipality of Kuala Lumpur, that it would be in the public interest to have the proposed new building with larger, better and healthier accommodation with a provision for a a car park in that heavily trafficked area. In this connection Ong J. (as he then was) in his judgment in *Mock How Chun (f)* v. *Lim Choon Fah* [3] said:—

> "Though of secondary importance, I think that improvement of the town by voluntary effort is as much to be encouraged in the public interest as the carrying out of town improvement at the public expense, particularly in cases which will result in the provision of better, larger and healthier accommodation in a busy commercial quarter already heavily congested."

Thus it could not be said that there was no evidence to support the finding of the board on this question or that the finding was unreasonable having regard to the evidence.

Taking the evidence as a whole, it could not be said that there was no evidence to support the board's decision, or that the evidence was inconsistent with its decision or that the only reasonable conclusion from the evidence contra-

dicted its decision. I therefore dismissed the appeal with costs.

Appeal dismissed.

Solicitors: *Lovelace & Hastings; Donaldson & Burkinshaw; R. R. Chelliah Bros.*

REDDY v. EMPLOYEES PROVIDENT FUND BOARD

[O.C.J. (Raja Azlan Shah J.) April 18, 1967]

[K.L. — Originating Summons No. 208 of 1965]

Provident Fund — Withdrawal — Employee leaving States of Malaya for Borneo States — Whether so entitled — Employees Provident Fund Ordinance, 1951, s. 13(1)(d).

Interpretation — Meaning of "Malaya" on formation of Malaysia — Canon of construction — Malaysia Act, 1963, s. 73(1) — Malaysia Constitution, art. 1(2) — Interpretation and General Clauses Ordinance, 1948, s. 2.

The applicant sought for a declaration that he was entitled to withdraw the whole of the money standing to his credit with the Employees Provident Fund. He was an officer in the service of the Federal Government and had since left and was at the time of these proceedings a judicial officer in the Borneo States. Under section 13(1)(d) of the Employees Provident Fund Ordinance withdrawal was permitted if an employee was about to leave "Malaya" with no intention of returning. The sole issue was whether "Malaya" meant "Malaysia" thus including the Borneo States.

Held: the word "Malaya" and "States of the Fedetion" appearing in the Employees Provident Fund Ordinance and the Interpretation and General Clauses Ordinance were not amended to fit in with the new changes on the formation of Malaysia. However under the proviso to section 73(1) of the Malaysia Act references to the federation were to be construed as references to Malaysia and expressions importing such a reference were to be accordingly construed, it followed that reference to the States of the Federation would be construed to mean the states of Malaysia and Singapore and with the secession of Singapore it would then mean the States of Malaysia.

Cases referred to:—

(1) *Direct U.S. Cable Co.* v. *Anglo-American Telegraph Co.* (1877), 2 App. Cas. 394, 412.

(2) *Barnes* v. *Jarvis* [1953] 1 W.L.R. 649.

ORIGINATING SUMMONS.

Dato' Athi Nahappan for the applicant.

Robert Ho for the respondent.

Cur. Adv. Vult.

Raja Azlan Shah J.: This is an application for a declaration that K. C. I. Reddy is entitled to withdraw the whole of the sum standing to his credit in the Employees Provident Fund.

It is not disputed that at the time of the action the applicant was a magistrate in the Judicial and Legal Service of the Government of the Federation of Malaysia. He had then applied for service in the Judicial and Legal Service of the Government of the Borneo States and therefore he intended to leave the States of Malaya for Borneo and had no intention of returning. That was conceded by the respondent board. In fact, the applicant is at present a judicial officer serving in the Borneo States.

The only issue pertinent to the present application is the construction of the provisions of section 13(1)(d) of the Employees Provident Fund Ordinance which reads:—

> "13(1). No sum of money standing to the credit of a member of the fund may be withdrawn from the fund except with the authority of the board and, subject to any regulations and rules made under sections 20 and 21 of this Ordinance, such authority shall not be given unless the board is satisfied that —
>
> (d) the employee is about to leave Malaya with no intention of returning thereto".

In the light of the concession made by the respondent board, the sole question to be resolved is whether the word "Malaya" as enacted in sub-section (1)(d) means what it says or whether it means "Malaysia". If "Malaya" means "Malaysia", then it is fatal to the present application.

The Employees Provident Fund Ordinance has quite a long statutory history, and I must consider it. The Ordinance came into force on 1st October, 1951. It is singularly significant to note that throughout the Ordinance the only place where the word "Malaya" is used is under section 13(1)(d). In four other places, that is section 2, the interpretation section, section 3, dealing with the constitution of the board, and the schedule to section 2, the phrase "Government of the Federation" is used, and in section 4, the provision which establishes the provident fund, section 5, in relation to expenses, and section 16(5), which requires an employer to furnish the board with certain particulars in respect of the approved fund, the word "Federation" is used to denote the identity of the country. None of those phrases or words, that is, "Government of the Federation", "Federation" or "Malaya" have been defined in the Ordinance and therefore it is necessary to resort to the Interpretation and General Clauses Ordinance, 1948. Under section 2 which deals with definitions it is perfectly clear that "Malaya" was defined to include all the Malay States and Settlements comprising the Federation of Malaya as well as the Colony of Singapore. The important distinction here is that "Federation", which was defined as "The Federation of Malaya established pursuant to the Federation of Malaya Agreement, 1948", was not to include Singapore, whereas "Singapore" has been included within the definition of "Malaya" as early as 1948. The Ordinance was amended from time to time, but for purposes of present consideration no significant amendment was made until 1959. In that year, consequent upon the establishment of the State of Singapore, the Ordinance pertaining to Singapore was amended and the definition of "Malaya" then was defined as "States of the Federation and Singapore". The changes made in 1959 have remained until